

ESTTA Tracking number: **ESTTA94232**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91168862
Party	Defendant Bunte, Brady Bunte, Brady 108 Pacifica #300 Irvine, CA 92618
Correspondence Address	Bruce B. Brunda STETINA BRUNDA GARRED & BRUCKER 75 Enterprise, Suite 250 Aliso Viejo, CA 92656 opposition@stetinalaw.com
Submission	Motion to Consolidate
Filer's Name	Bruce B. Brunda
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Date	08/11/2006
Attachments	MotionToConsolodate.pdf (4 pages)(88062 bytes)

Case: BUNTE-008M and BUNTE-010M
Mark: CABO AZUL and CABO NUTS
Trademark Applications

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 78/468,593 and 78/551,176

Red Head Inc. dba Cabo Wabo)	Opposition Nos. 91168862 and 91168968
Enterprises, Inc.,)	
)	
Opposer,)	
)	
vs.)	
)	
Brady Bunte,)	
)	
Applicant.)	

MOTION TO CONSOLIDATE OPPOSITION PROCEEDINGS PURSUANT TO
FED. R. CIV. P. 42(a)

Box TTAB – No Fee
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

It is hereby requested by stipulation and agreed to by and between the attorneys for the respective parties, that the above-captioned Opposition proceedings be consolidated. The grounds for consolidation are as follows:

When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. See Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). In determining whether to

consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby. See, for example, Wright & Miller, Federal Practice and Procedure: Civil §2382 (1971); and *Lever Brothers Co. v. Shaklee Corp.*, 214 USPQ 654 (TTAB 1982). Consolidation is discretionary with the Board, and may be ordered upon motion granted by the Board, or upon stipulation of the parties approved by the Board, or upon the Board's own initiative. See, for example, *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); and *Regatta Sport Ltd. v. Telux-Pioneer, Inc.*, 20 USPQ 1154 (TTAB 1991).

Inasmuch as the parties to the instant proceedings are identical and the issues are closely related, consolidation of Opposition No. 91168862 and Opposition No. 91168968 is hereby requested.

It is hereby requested that the consolidated cases be presented on the same record and briefs. See *Hilson Research, Inc. v. Society for Human Resource Management*, supra; and *Helene Curtis Industries, Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

It is hereby requested that the Board maintain Opposition No. 91168968 as the "parent" case and therefore, from this point forward only a single copy of any paper or Motion should be filed herein; but that copy should bear both proceeding numbers in its caption. It is understood that exceptions to the general rule involve stipulated extensions of the discovery and trial dates, and briefs on the case. See Trademark Rules 2.121(d) and 2.128.


It is hereby understood that despite being consolidated, each proceeding retains its separate character and requires entry of a separate judgment. See Wright & Miller, Federal Practice and Procedure, *supra*. Therefore, the decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings and a copy of the decision shall be placed in each proceeding file.

Therefore, for the reasons stated above it is hereby requested that Opposition No. 91168862 and Opposition No. 91168968 be consolidated. A Proof of Service to counsel for Opposer is attached hereto.

STIPULATED AND AGREED:

Dated: August 11, 2006

STETINA BRUNDA GARRED & BRUCKER

By: 

Bruce B. Brunda
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Aliso Viejo, CA 92656
(949) 855-1246
Counsel for Applicant
Brady Bunte

Dated: August 11, 2006

GREENBERG TRAURIG LLP

By: 

Matt Pulliam
The Forum
3290 Northside Parkway, Suite 400
Atlanta, GA 30327

(678) 553-2100
Counsel for Opposer
Red Head Inc. dba Cabo Wabo Enterprises, Inc.,


PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **August 11, 2006**, the attached **MOTION TO CONSOLIDATE OPPOSITION PROCEEDINGS PURSUANT TO FED. R. CIV. P. 42(A)** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Matt Pulliam
GREENBERG TRAURIG LLP
The Forum
3290 Northside Parkway, Suite 400
Atlanta, GA 30327

Executed on **August 11, 2006** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.



Kimberly Carlsen